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FILED
FEB 13 1932

No. 694

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA

v.

GEORGE OTIS SMITH

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

MOTION FOR LEAVE TO FILE A BRIEF AMICI CURIÆ AND TO TAKE PART IN THE ORAL ARGUMENT

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The Attorney General and the Solicitor General move for leave to file a brief *amici curiae* in this cause, and for leave to take part in the oral argument for not more than fifteen minutes.

This is an action in *quo warranto* brought by the United States Attorney for the District of Columbia acting pursuant to instructions from the Attor-

ney General by request of the United States Senate.[1]

Although the action is formally by the United States against George Otis Smith to test the latter's right to his office, the controversy is essentially one between the United States Senate and the President. Accordingly, arguments on behalf of the petitioner, the United States, were presented in the Supreme Court of the District of Columbia by counsel for the United States Senate, and the Attorney General and the Solicitor General, by special leave of court, presented a brief *amici curiæ* on behalf of George Otis Smith.

In this Court, for similar reasons, the United States is represented by counsel employed by the United States Senate and the personal interests of George Otis Smith are represented by his own counsel. Since the right of George Otis Smith to hold his office depends on the power of the Presi-

[1] Senate Resolution 415, 71st Congress, 3d Session, adopted February 5, 1931, reads in part as follows:

"*Resolved*, That the district attorney for the District of Columbia be, and he hereby is, requested to institute proceedings in quo warranto under the code of the said District in the Supreme Court thereof to test the right of George Otis Smith as a member of the Federal Power Commission; that he, the said district attorney, be requested to associate with him counsel for the United States Senate in such proceedings; that the Committee on the Judiciary be, and it hereby is, authorized to engage such counsel, at a cost not to exceed $2,500, who shall, in the event that the requests herein recited are acceded to, assist the said district attorney in such proceedings."

dent under the Constitution, we respectfully move for leave to file a brief *amici curiae* and to take part in the oral argument for not more than fifteen minutes.

WILLIAM D. MITCHELL,
Attorney General.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932